XI-HC—78

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

S.B. HON'BLE SHRI JUSTICE DHIRENDRA MISHRA, J

CRIMINAL APPEAL NO. 701 OF 2007

Appellant/Surety : Mahettar,
S/o Nakchhed
Caste – Suryavanshi,
Aged about 80 years,
R/o Village – Pangaon,
P.S. & Tahsil – Pamgarh,
Distt: Janjgir Champa (C.G.)

Versus

Respondents :
1. State of Chhattisgarh
Through District Magistrate
& Collector, Distt. Janjgir
Champa (C.G.)

2. Tehsildar Pamgarh,
Distt. Janjgir Champa (C.G.)

3.9.2007

Shri Govind Miri, counsel for the appellant.

Shri Neeraj Mehta, PL for the State/respondents.

This appeal under Section 449 of the Code of Criminal Procedure is directed against the order dated 2nd August 2007 passed in MJC No. 44/07 whereby learned Sessions Judge, Janjgir-Champa in a proceeding under Section 446 of the Cr.P.C. has forfeited the total amount of surety furnished by the appellant for a sum of Rs.50,000/- for failure on the part of the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

appellant to produce accused Umesh on 7.7.2007 in S.T. No. 46/06.

Learned counsel for the appellant submits that accused Umesh could not appear on 7.7.2007 before the trial Court on account of his illness and as he could not communicate about his illness to his advocate, therefore, no application was filed on his behalf by his advocate and in these circumstances the Court below directed issuance of warrant of arrest against accused Umesh and further directed issuance of show cause notice against the present appellant as to why the amount of surety should not be forfeited. He further submits that the appellant appeared before the trial Court and submitted his reply on 20.7.2007 along with an affidavit and stated that the accused could not appear on 7.7.2007 as he was suffering from seasonal fever and as soon as he learnt about issuance of warrant of arrest against accused Umesh, he was bringing the accused for producing him before the Court on 20.7.2007, however, the accused was arrested in the Court premises on 20.7.2007 itself. Learned Sessions Judge without considering reply to the show cause notice submitted by the appellant, ordered for forfeiture of Rs.50,000/- being amount towards surety, which is contrary to law with an observation that no medical certificate regarding illness has been submitted.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	On the other hand, learned counsel for the State/respondents supports the impugned order. Taking into consideration the reply to show cause notice filed by the appellant before the Court below, which is supported by an affidavit and further considering the fact that accused Umesh was arrested on the next date of hearing i.e. 20th July 2007 while he was being taken to the Court for his appearance, the appeal preferred by the appellant is partly allowed and order of forfeiture of Rs.50,000/- is set aside and instead thereof, only Rs.1,000/- be forfeited. **Sd/-** **Dhirendra Mishra** **Judge**	